

STATE OF MICHIGAN
COURT OF APPEALS

ROGER RATHI,

Plaintiff-Appellee,

v

FORD MOTOR COMPANY,

Defendant-Appellant.

UNPUBLISHED

September 27, 2005

No. 261310

Wayne Circuit Court

LC No. 04-407711-CD

Before: Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying defendant's motion for summary disposition in this employment discrimination action. We reverse. Plaintiff claims that defendant constructively discharged him when it selected him for a promotion on the basis of his national origin, hoping that the additional responsibilities would force him to resign. He sent his resignation on the morning of March 16, 2001, but offered to stay on until March 21, 2001, to provide a smoother transition. On March 15, 2004, plaintiff filed a complaint alleging that the constructive discharge violated the Civil Rights Act (CRA), MCL 37.2101 *et seq.*

Defendant argues that the trial court erred by denying its motion for summary disposition and holding that defendant's statute of limitations defense is precluded by the doctrine of equitable estoppel. We agree. Whether a cause of action is barred by a statute of limitations is a question of law that is reviewed de novo on appeal. *Magee v Daimler Chrysler Corp*, 472 Mich 108, 111; 693 NW2d 166 (2005). An action under the CRA must be brought within three years after the cause of action accrues. MCL 600.5805(10). The filing of a complaint alone is insufficient to toll the running of the statute of limitations. The statute of limitations is tolled only when the complaint is filed and the requirements of MCL 600.5856 are met. *Gladych v New Family Homes, Inc*, 468 Mich 594, 595, 605; 664 NW2d 705 (2003). When plaintiff filed his complaint, the relevant portion of MCL 600.5856 stated:

The statutes of limitations or repose are tolled:

- (a) At the time the complaint is filed and a copy of the summons and complaint are served on the defendant.
- (b) At the time jurisdiction over the defendant is otherwise acquired.

(c) At the time the complaint is filed and a copy of the summons and complaint in good faith are placed in the hands of an officer for immediate service

If the requirements of MCL 500.5856 are not met, the statute of limitations continues to run. *Gladych, supra* at 605.

Plaintiff did not serve his complaint by certified mail until March 24, 2004, after the three-year limitations period expired.¹ Although plaintiff filed his complaint on March 15, 2004, and immediately placed the complaint in the hands of a professional process server for personal service at defendant's corporate headquarters, a private process server is not an "officer" for purposes of the tolling statute. *Coleman v Bolton*, 24 Mich App 547, 551-556; 180 NW2d 319 (1970). Therefore, plaintiff failed to serve his complaint within the limitations period.

Nevertheless, plaintiff contends that equitable estoppel prevents defendant from denying that it received timely service. See *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997). Application of the doctrine ordinarily requires proof of "conduct clearly designed to induce 'the plaintiff to refrain from bringing action within the period fixed by statute.'" *Lothian v Detroit*, 414 Mich 160, 177; 324 NW2d 9 (1982), quoting *Renackowsky v Bd of Water Comm'rs of Detroit*, 122 Mich 613, 616; 81 NW 581 (1900).

Plaintiff relies on an affidavit from his process server which includes the following statements:

5) Right after filing the lawsuit that day around 4:30 PM, I took a copy of the Complaint and Summons to Defendant Ford Motor Co. at [its headquarters.]

6) I met the person sitting at the entrance of the building. He appeared to be an Information Officer for the Defendant. I told him that I have a lawsuit against Ford Motor Co. and requested that I be permitted to see person [sic] in-charge [sic] of the Office to serve the lawsuit on him or her.

7) I was not allowed to see the person in-charge [sic] of the Company. The Information Officer further told me that no one here takes Personal Service and that he can not accept the Service on behalf of the Defendant. He further told me that I have to send the Lawsuit by Mail.

¹ Plaintiff cites *Magee, supra*, for the proposition that his cause of action accrued on March 21, 2001, even though he sent a resignation letter to his superiors on March 16, 2001. We note, however, that in *Jacobson v Parda Federal Credit Union*, 457 Mich 318, 321, 328; 577 NW2d 881 (1998), the Supreme Court focused on the date the employee tendered the resignation as the date the employee was constructively discharged. This was based on the longstanding rule that a discharge occurs when a reasonable person in the employee's place would feel compelled to resign. *Id.* at 328. Therefore, constructive discharge generally occurs at the moment of resignation. *Id.* Nevertheless, applying the later date would not change the outcome of this case, because plaintiff failed to present any evidence that defendant's actions between March 15 and March 21, 2004, warranted estoppel.

Plaintiff did not present any evidence that this information was false. In fact, we would find it surprising that a process server could garner a private audience with the Ford family simply by arriving at Ford headquarters with a lawsuit. The only questionable information provided by the person manning the front desk related to the lack of any individual there who could take personal service. However, the process server apparently did not know the name of the agent who should accept service, and the man at the front desk did recommend mailing the lawsuit, which is a perfectly valid form of service. MCR 2.105(D)(4). On March 19, plaintiff asked one of his fellow attorneys and associates to look into the proper method of service, and the attorney contacted defendant's resident agent that same day. The resident agent again told the attorney to simply send the complaint and summons by registered mail. The attorney's office did so, four days later. Because plaintiff failed to present any evidence that defendant's conduct was designed to induce him to refrain from bringing a timely action, the doctrine of equitable estoppel does not apply. *Cincinnati Ins Co, supra*.

Lastly, plaintiff fails to demonstrate that he diligently pursued his claim or that fairness otherwise demands that we equitably toll the running of the limitations period. *Ward v Rooney-Gandy*, 265 Mich App 515, 517; 696 NW2d 64 (2005). Plaintiff is an attorney who apparently chose not to file his complaint until the day before the three-year limitations period expired. We do not consider his actions diligent nor the application of the limitations period unfair.

Reversed.

/s/ Karen Fort Hood
/s/ Peter D. O'Connell

White, J. I concur in the result only.

/s/ Helene N. White